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I-D Electric, Inc. A Utah Corporation, Plaintiff and Appellee vs. Linda Gillman, Defendant and Appellant

Utah Court of Appeals

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

I-D ELECTRIC, INC. a Utah Corporation, Plaintiff and Appellee, vs. LINDA GILLMAN, Defendant and Appellant.	**REPLY BRIEF OF APPELLANT, LINDA GILLMAN** Appeal #20150682-CA District Court #110917777

APPELLANT'S REPLY BRIEF

Appeal from the Third Judicial District Court, Salt Lake Department
The Honorable Richard D. McKelvie

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ARGUMENT

Churning old distortions will not resolve this case. For more than five years, I-D Electric has resolutely dodged attorney fee liability for breaking lien law, using a stratagem that mushes together into a common pulp, the distinct bodies of mechanic's lien law, wrongful lien law, and contract law. The subject of this appeal is Gillman's plea to discard I-D's pulp and restore integrity to each of these divisions of law. I-D will not stay on the subject.

The core of this case originated over a disputed difference of only a few hundred dollars, the fraction of an electrical services invoice totaling $1,827.61. Instead of promptly resolving the miniscule differential, I-D manufactured a massive mechanic's lien/wrongful lien case that permanently rotated the nucleus from the minute contract dispute to the overwhelming attorney fees from lien litigation. Lien attorney fees quickly eclipsed the contract and I-D has obstinately fought to escape them—the sole reason this litigation has entered its sixth year, with attorney fees hovering near $100,000. I-D turned a tiny contract skirmish over a few hundred dollars into titanic attorney fee combat that reaches 10,000% in proportion, yet adamantly repudiates any responsibility by *still* refusing to concede the liens.

There were two successive mechanic's liens. I-D filed first against Gillman's Salt Lake condominium, where no work was ever done. Without any statutory authority under *UCA §38-1-3*, the condo lien was wrongful. I-D filed the second mechanic's lien

against Gillman's Herriman house, where I-D worked for one day. Years before trial, Gillman summarily defeated both mechanic's liens and has statutory entitlement to her attorney fees. Ever since, I-D has incessantly argued that the liens and their losses are *Gillman's fault* and she should pay I-D's attorney fees for *losing* them because she *should have corrected* I-D before it was too late.

I-D's *'Gillman-fault'* theory is its only theory. The hypothesis is that Gillman had a 'duty' to protect I-D from itself for violating mechanic's lien and wrongful lien law. I-D's *Appellee Brief* is another iteration in an everlasting campaign to indict Gillman for failing her 'duty'. While debate of *'Gillman-fault'* raged on, the contract issue lay paralyzed for years, buried under the oppressive weight of lien attorney fees, as I-D refused to entertain any settlement negotiation that did not in include the *quid pro quo* that Gillman abandon her statutory entitlement to them. *(R. 757:3-758:8)* The contract issue never surfaced until the court prodded I-D with a second *Order To Show Cause*, nearly three years into litigation. *(R. 243-244; 294-295)*

1. The issues on appeal are questions of law, not the trial court's discretionary latitude.

Gillman pled these issues on appeal, all conclusions of law:

> **Issue for Review**: Did the trial court err in its interpretation of *UCA §38-1-18*, awarding attorney fees to the losing party on the mechanic's liens? (*Appellant Brief*, p. 1)

Without deference to the statutory mandate of attorney fees to Gillman for defeating I-D's two mechanic's liens before trial, the trial court ruled that Gillman was at-fault for all of I-D's fees in the case, including those attributed to its lien losses, because she did not pay the invoice and she created the wrongful lien cause of action. *(R. 657:43-658:44, Conclusions of Law; R. 816:5-6, Order on Motion for Attorney Fees)*[1]

Issue for Review: Did the trial court err in its interpretation of *UCA §38-1-3* and *UCA §38-9-1*, in holding that Plaintiff's mechanic's lien was not wrongful, and denying statutory damages and attorney fees to Defendant? (*Appellant Brief*, p. 2)

The trial court ruled the Salt Lake condo lien was not "unlawful," because I-D corrected it by "amending" the *Notice* to substitute the Herriman house—three months past the statutory deadline. *(R. 816:5-6, Order on Motion for Attorney Fees)*

The court ruled the condo lien was not wrongful because it was "statutory," even though it did not conform to a single statutory requisite. The court further opined that a mechanic's lien cannot be wrongful because it is inaccurate or misidentifies the property. *(R. 657:39, Conclusions of Law)*

Issue for Review: Without an agreement for price, did the trial court err in its conclusion of law, that there was an express contract formed between Plaintiff and Defendant, rather than a contract implied-in-fact? (*Appellant Brief*, p. 2)

[1] The court's *Findings of Fact, Conclusions of Law and Order* and *Order on Motion for Attorney Fees*, did not fully designate paragraphs by number or letter. For convenience of reference, those designations were added to the court's originals and appear as superscript. The altered originals are Tabs #1 and Tab #2 in the Addendum.

> The trial court ruled that even though there was never an agreed price, there was still a clear meeting of the minds and the contract was express, because Gillman was well-versed in construction contracts and knew she would be billed for I-D's work. *(R. 655-656:34, Conclusions of Law)*

2. Consolidating the questions of law into contract/wrongful lien/mechanic's lien 'discretionary' pulp cannot neutralize I-D's liability for Gillman's statutory mechanic's lien attorney fees.

I-D rewrote Gillman's *de novo* appeal issues, converting them to a 'discretionary' standard of review that is not genuine:

> **ISSUE #1:** Did the court abuse its discretion in determining Gillman was not entitled to any attorney fees and costs? (*Appellee Brief*, p. 1)

I-D's statement of the issues sharply illustrates the subterfuge to evade attorney fees from its lien losses: Proclaim the pulp indivisible, to justify the blanket overlay of "flexible and reasoned" attorney fee principle that designates I-D the beneficiary of all its attorney fees, while forbidding Gillman any of hers. Without pretense, I-D admits the artifice:

> **Gillman argues** that because she **defeated** I-D Electric's **Amended Lien on summary judgment**, she is entitled to an award of attorney fees and costs. That . . . is not consistent with the "**flexible and reasoned** approach". . .
> //
> The **flexible and reasoned approach requires the court to view the totality of the circumstances**, weigh the success of

> the parties on all claims, and use common sense when deciding which party prevailed.
> //
> [t]he **trial acknowledged that Gillman defeated I-D Electric's Amended Lien on summary judgment**. However, viewing this case from a common sense perspective, the trial court found that **I-D's two victories over Gillman's wrongful lien claim. . .and breach of contract claim were more significant**.
> //
> Additionally, the trial court found that **Gillman was the principal party responsible for the excessive fees and costs in the case**.
> //
> **On that basis, Gillman is not entitled to attorney fees originating from the dismissal of the Amended Lien** on summary judgment, and **her claims on appeal are unfounded**. *(Appellee Brief, pp. 33-34) (Emphasis added)*

To rationalize the "flexible and reasoned" basis for denying Gillman her statutory attorney fees, I-D backs into ratifying the pulp by citing to a single authority: *A.K.& R. Whipple Plumbing & Heating v. Guy, 2004 UT 47, P 7, 94 P.3d 270*. The unique facts of this mechanic's lien case are not even distantly correlated. There were not multiple issues to mush together in *Whipple*, there were competing claims on the same issue that reconciled at trial among the parties to a litigation draw. *Whipple* was exclusively rooted in mechanic's lien law. There was no contract, wrongful lien, or any other issue in the case.

Whipple (HVAC subcontractor) filed a $30K mechanic's lien against Guy (homeowner) and Aspen (general contractor). Aspen counterclaimed $25K against Whipple for substandard work. The trial resulted in a net judgment for Aspen and Guy of $527 and they sought statutory attorney fees as the "successful" party under *UCA §38-1-18*, the Mechanic's Lien statute. The trial court considered the 2% recovery swing

to be a litigation "draw," and denied attorney fees. Both the Appellate and Supreme Court benches affirmed. In its decision, the Supreme Court isolated "competing claims" as the basis for applying the "flexible and reasoned" attorney fee method:

> We can find no case law construing the term "successful party" **in light of circumstances like those in this case,** where **both parties have won and lost** some of their **competing claims** arising from the **same underlying facts.** *(Id., ¶17)* (Emphasis added)

> The court of appeals, after **using the net judgment as a starting point,** carefully **weighed the relative success** of the parties **on their competing claims, balancing the amounts each party sought with the amounts each party recovered.** The court of appeals thus correctly applied the flexible and reasoned approach to determining the successful party under section 38-1-18 of the Utah Code. *(Id., ¶32) (Emphasis added)*

There were no competing claims between I-D and Gillman in the mechanic's lien litigation. I-D first filed a flawed lien on Gillman's Salt Lake condo, releasing it voluntarily some six months later when I-D "amended" the *Notice* of the condo lien to substitute the Herriman house, three months beyond the statutory deadline. The flawed Herriman lien was dismissed 18 months later by Judge Anthony Quinn on summary judgment. Both mechanic's liens were settled by July 2013 and I-D did not appeal.

I-D invokes *Whipple*, implying that the contract claim and wrongful lien were 'competing' at trial with the mechanic's lien issue, to superimpose the *Whipple* "flexible and reasoned" method that relegates Gillman's statutory entitlement to attorney fees

for defeating the mechanic's liens to nothing. The unique *Whipple* context does not support I-D's amalgamated pulp, composed of mechanic's liens/wrongful lien/contract. Both mechanic's liens were discrete, devoid of any competing claims, and lost summarily long before trial. Statute and precedent mandate attorney fees to Gillman for defeating the two mechanic's liens.

3. *'Gillman-fault'* bonded the pulp to the trial rulings.

There were no mechanic's lien issues remaining for trial and **the liens were not relevant**. However, I-D resurrected them at the pre-trial conference, then re-litigated the mechanic's liens at trial, setting the stage for mushing all issues into the pulp.

I-D's resuscitation of the liens was a clever manipulation that introduced prevaricated 'facts' that misled the court and infected the trial with the *'Gillman-fault'* notion that she was responsible for the mechanic's liens and their losses—a theory adopted by the trial court that transfused the *Conclusions of Law* and distracted the rulings from straightforward statute and precedent.

I-D's *'Gillman-fault'* theory turned on two criteria, the Mechanic's Lien 180-day statutory deadline to file a valid lien on the Herriman house, and Gillman's 'duty' to correct I-D's lien on the Salt Lake condo before the deadline expired to convert the condo lien to the Herriman house. Regardless of whether Gillman bore the legal responsibility to advise I-D on lien law, the undeniable reality of the calendar defies the logic of *'Gillman-fault'*:

- **March 11, 2011**: I-D **worked** one day on the **Herriman house.**
- **March 24, 2011**: I-D invoiced Gillman for $1,827.61.
- **April 7, 2011**: I-D replied to Gillman's request for invoice detail.
- **May 6, 2011**: By letter, Gillman **offered to settle**, informing I-D of her law/construction background; **I-D never replied to the settlement offer.**
- **June 15, 2011**: I-D filed a **mechanic's lien** under *UCA §38-1-3* on the **Salt Lake condo**, where it had **never worked.** The lien had no statutory authority.
- **Sept. 8, 2011**: The **180-day statutory deadline expired** to file a mechanic's lien on the **Herriman house**.
- **Sept. 22, 2011**: I-D filed suit to **foreclose the Salt Lake condo lien.**
- **Sept. 25, 2011**: I-D served Gillman with the lien foreclosure suit.
- **Nov. 11, 2011**: In satisfaction of *UCA §38-9-1,* the **Wrongful Lien statute,** Gillman personally delivered a letter, requesting I-D remove the condo lien.
- **Dec. 5, 2011**: Gillman filed a *Petition to Nullify* the Salt Lake condo lien.
- **Dec. 6, 2011**: I-D **"amended"** the **condo lien, substituting** the **Herriman house, 3 months past the 180-day statutory deadline**. The "amendment" effected voluntary release of the condo lien.
- **July 8, 2013**: Judge Anthony Quinn **dismissed the Herriman house lien** and foreclosure cause of action on summary judgment. The contract claim and wrongful lien were the only remaining issues in the case.

Trial judge, the Hon. Richard McKelvie, was seated to the Third District bench in June 2014, replacing Judge Anthony Quinn. The July 2014 pre-trial conference was a month later. Taking full advantage of the trial court's very limited familiarity with the three-year history and seven-inch file in the case, I-D seized on its *'Gillman-fault'* theory

to re-litigate the mechanic's liens, casting Gillman as the aggravating culprit inciting the mechanic's lien attorney fees. I-D's counsel, Brady Gibbs, blatantly misrepresented the truth of both fact and law to the court during the pre-trial, successfully sowing the seeds of deception that would dramatically prejudice the trial, the trial ruling, and the subsequent attorney fee award. During the rehearsal of history, the court commented that mechanic's liens attorney fees were "the tail wagging the dog." *(R. 922:16-19)* I-D capitalized on that opening with this partisan version of the history:

- After Gillman was served with the suit to foreclose the Salt Lake condo lien Sept. 25th, neither she nor her counsel informed Gibbs that the Herriman house should have been liened, not the condo. *(R. 932:25; 933:1-9)* To the court's direct question of whether the statute was expired by Sept. 25th, Gibbs replied that it had not.[2] *(R. 933:10-11)*

- Gillman's Nov. 11th letter to I-D, requesting removal of the wrongful condo lien, was "purposely ambiguous" for its failure to inform I-D that the Herriman house should have been liened, not the condo. *(R. 936-23-25; 937:1-14)* Gillman and her counsel did not include notification in the letter because the statute had not expired and there was still time for I-D to amend the condo lien and substitute the Herriman house. *(R. 937:15-25; 938:1-3)*

Neither Gillman nor her attorney had any duty to provide I-D or Gibbs with legal advice on lien law. Nevertheless, I-D's trial counsel complained to the court that both had opportunity—twice—to advise I-D that the Herriman house should be substituted for the condo lien, but chose to 'lie in wait' until the statute expired, to prevent I-D from

[2] The hearing transcript does not accurately include the last four words of the court's question to Gibbs. The exact text is: **You could have corrected it within the statutory time?** Accuracy can be verified at *13.55.05*, the time stamp on the recording.

timely amending the condo lien with the Herriman house, and also "set up" a wrongful lien. That was not the truth. The 180-day statutory deadline to file a mechanic's lien on the Herriman house expired Sept. 8th. By the Sept. 25th service of the foreclosure lawsuit, the deadline was more than two weeks past. By the Nov. 11th delivery of the letter, the deadline was more than two months past. By the Dec. 6th "amendment" of the condo lien to substitute the Herriman house, the deadline was three months past. Whether the condo lien was wrongful was completely unrelated to the mechanic's lien statutory deadline.

I-D's trial counsel inflamed the court at the pre-trial with these false statements of 'facts', maneuvering re-litigation of the two settled mechanic's liens back into the trial and callously prejudicing its entirety. Gillman never convinced the court that the mechanic's liens were not relevant to trial; that she had no duty to provide I-D with legal counsel; and, that the inexorable forward march of the calendar reduced I-D's misrepresentations to factual impossibility. Nevertheless, every court ruling is saturated with the tangible irritation of I-D's *'Gillman-fault'* theme:

- Gillman 'knew', or 'should have known', that I-D filed a lien against her Salt Lake condo before the statutory deadline, and Gillman 'should' have corrected I-D before its expiration.

- Gillman prolonged the case by failing to correct I-D, and thereby "set up" the wrongful lien.

- Gillman's misdeeds on the liens justify charging her *all* the litigation costs, including I-D's attorney fees for *losing* its mechanic's liens.

Taking advantage of the editorial opportunity at the pre-trial, I-D pre-emptively biased the court with other spurious accusations:

- Gillman's summary judgment motion to remove the Herriman house lien was only a conniving plot to exploit the lawsuit and "make money" from the case with her background in the law—"retribution" because I-D "lined up on the other side of her or challenged her with regard to the bill." *(R. 934:14-24; 935:11-14)*

- Gillman disputed the invoice by bullying and threatening I-D with her legal and construction experience. *(R. 931:22-24)* The intimidation left I-D with no choice but mechanic's liens to collect its invoice. *(R. 1198:9-25)*

The truth underlying this last accusation has been warped approximately a dozen times in the record, twice in the court's rulings. It comes from the text of Gillman's May 6, 2011 letter to I-D, which concludes with an offer to settle. Every time it has been quoted in I-D's briefing and the court's rulings, the last two paragraphs are deleted:

> Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 25.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first $4.74 million phase of a 15-month construction project in December. The second $1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than $11 million.

I hired another licensed electrician to finish the work in my house and garage. What remained after the only day Chet was there is substantially more complicated, representing at least five times more work. I paid $650 for all of it (labor only).

➡ **I am willing to pay a realistic amount for the work that was done**, but no more. **Please recalculate** it. *(R. 52-53) (Emphasis added)*

I-D's response to Gillman's offer to settle was its mechanic's lien on the Salt Lake condo, where it never worked. I-D's president testified at trial that he decided to initiate legal action after receiving the letter. *(R. 1198:9-25)* While this is a random sample of 'fact' underlying the *'Gillman-fault'* theory, it is a prime example of the half-truths I-D formulated to influence the court.

4. The Court of Appeals is vested with jurisdiction to rule on Gillman's statutory right to attorney fees for defeating I-D's mechanic's liens.

The alternative to I-D's pulp amalgam for demanding **all** attorney fees in the case is its argument that the Court of Appeals has no jurisdiction to rule on Gillman's entitlement to statutory attorney fees for summarily defeating the two mechanic's liens. This is the basis of I-D's unsound reasoning:

1. **Feb. 12, 2015**: Gillman filed a *Rule 52 Motion to Amend Findings of Fact and Conclusions of Law*. *(R. 676-684)* Gillman's *Motion* pled the court amend its Jan. 29, 2015 trial ruling to reflect Gillman's statutory entitlement to attorney fees for defeating I-D's mechanic's liens, *UCA §38-1-18*. *(R. 647-659)*

2. **Mar. 18, 2015**: The trial court denied Gillman's *Rule 52 Motion to Amend*, without explanation. *(R. 739-741)*

3. **June 8, 2015**: The court ruled on I-D's motion for attorney fees, which included its fees for *losing* the mechanic's lien litigation. *(R. 815-818)*

4. **July 9, 2015**: The trial court entered final *Judgment* in the case. *(R. 851-853)*

5. **July 15, 2015**: I-D filed an *Amended Judgment* to increase attorney fees by more than $5,000. *(R. 859-862)*

6. **July 17, 2015**: The court entered I-D's *Amended Judgment* (*ex parte* order). *(R. 874-876)*

7. According to I-D, the court's **Mar. 18, 2015** denial of Gillman's *Rule 52 Motion to Amend* the trial ruling to reflect her statutory entitlement to attorney fees constituted entry of a **final** "judgment or order," which started the toll of the appeal deadline.

8. I-D's reading of *Rule 4(b), Utah Rules of Appellate Procedure*, allows 30 days to appeal from a trial court's ruling on a *Rule 52* motion, regardless of its proximity to the actual "final" judgment.

I-D's argument misconstrues *Rule 4*, which is readily apparent from just its titles:

- *Rule 4.* Appeal as of right: when taken.

- *Rule 4(a).* Appeal from final judgment and order. This section specifies the 30-day time limit for appeal, after entry of the final judgment and order.

- *Rule 4(b).* Time for appeal extended by certain motions. This section clarifies that *Rule 52* motions **extend** the 30 day time limit following entry of final judgment/order, not terminate that limit.

Each of the cases I-D cites is specific in identifying the **final** judgment/order that starts the 30-day toll of the appellate clock. In each case involving a *Rule 52* motion, the motion **followed** the final judgment/order. Gillman's *Rule 52 Motion to Amend Findings*

of Fact and Conclusions of Law was taken Feb. 12, 2015 from the trial court's Jan. 29, 2015 trial ruling, not its **final** entry of judgment in July 2015—the date the appellate clock began to toll. Gillman filed appeal within the 30-day window of the rule after final judgment. I-D's jurisdictional argument, that Gillman's *Rule 52* motion tolled the appellate clock, is without merit under the plain language of *Rule 4* and its interpretation in precedent opinion. The motion was intervening in Feb. 2015, well in advance of the court's final judgment in July 2015.

5. **I-D refuses to comprehend that Mechanic's Lien "statutory" authority is absolute under *UCA §38-1-3*. Without that authority, the Salt Lake condo lien was wrongful.**

Gillman has thoroughly analyzed the wrongful lien question in the *Appellate Brief* (pp. 29-39). I-D's *Appellee Brief* answers none of Gillman's analysis, but reverts to the same tired arguments that have already filled dozens of briefing pages over five years.

There were two liens in this case—the first on the Salt Lake condo, where I-D never worked, the second of the Herriman house, where I-D actually provided service. Gillman has never deviated from the assertion that only the Salt Lake condo lien was wrongful, while I-D has postulated that the condo lien was inextricably tied to the Herriman lien, even though the two are manifestly distinct under both mechanic's lien law and wrongful lien law. Gillman has countered repeatedly with the stark separation between them, cutting through I-D's convoluted logic. Following is just one of Gillman's futile attempts (nearly 2 years ago), based on *Hutter v. Dig-It, 2009 UT 69, 219 P.3d 918*:

> A mechanic's lien is "statutory" if it conforms to the statute, but only if it conforms. Dig-It had a statutory *right* to a mechanic's lien on the Hutter property because it performed services for that property. I-D had no statutory right to a lien on Gillman's Salt Lake condo because it never performed any services or provided any materials to that property. Those facts and that statutory context could not be more distinctly different from the *Hutter* case. I-D had a statutory *right* to a lien on Gillman's Herriman house, but did not avail itself of that right by complying with any of the mechanic's lien statutory provisions. Yet again, as I-D has always staunchly insisted, its lien *right* on the Herriman house somehow converted the Salt Lake condo lien to *statutory* validity, once I-D "amended" the condo lien by substituting the Herriman house—three months past the 180-day statutory limit.
>
> Dig-It fully complied with the statutory provisions and held a viable mechanic's lien on the Hutter property. That lien proved unenforceable for Dig-It's failure to follow through by filing the stipulated notices under *§38-1-31*. I-D never had a statutory lien at all, not on either of Gillman's properties, for its complete failure to comply with *any* of the mechanic's lien statutory conditions. The *Hutter* case turned on whether Dig-It's *valid* lien was enforceable. Gillman's case turns on whether there was ever a valid lien at all, which this court has already ruled there was not. *(R. 549-560, Gillman's Reply to Plaintiff's Oppostion against Defendant's Motion for Partial Summary Judgment. July 2014)*

6. "Statutory" liens and "common law" liens are distinctly different. The Salt Lake condo lien was "common law" and protected by the Wrongful Lien statute.

On the shoehorn of *Hutter*, I-D introduces the Supreme Court's reference in that opinion to the senate debate preceding passage of the Wrongful Lien legislation. Essential in that debate is the principal difference between "statutory" liens and "common law" liens, and the Court's salient observation that the Wrongful Lien statute

was only intended to protect property owners from the common law variety. Gillman does not disagree.

In Utah, property liens are either statutory or common law, not both. Following I-D's thread of reasoning, there is a phantom hybrid hanging somewhere between in suspended animation. I-D invents that hybrid with exhaustive detail describing the work they did, endless argument that they 'did not know' where they did it, filing a lien on property where they never worked, but excusing themselves because Gillman 'knew' what they had done and did not give them the legal advice that could have saved them from breaking lien law. Oh well, anyway. . .the Mechanic's Lien statute *(UCA §38-1-3)* protects I-D's "statutory" entitlement to a lien, since they really did work *somewhere*, and they "corrected" their "error" as soon as they 'knew' they had failed to conform to the law—three months too late—generating another lien that broke the law *again* and was dismissed on summary judgment 16 months before trial.

Though certainly creative, missing in this tortured circuit of rationale is the first statutory prerequisite of *UCA §38-1-3*—actually working at the liened property, which never happened on the Salt Lake condo. I-D will not give up its quarrel that working at the Herriman house somehow qualified the Salt Lake condo lien as "statutory." Never working on the condo failed the first prerequisite of authority under *UCA §38-1-3* and was fatal to the condo lien from the outset. Merely working *'somewhere'*, even if *'somewhere' might* have qualified for a legitimate "statutory" lien on the Herriman

house *'sometime'*, I-D's *'might-have-been'* Herriman daydream cannot retroactively salvage the *'never-was-and-never-could-be'* Salt Lake condo lien from its wrongful plight, particularly since *'might-have-been'* was already beyond the statutory 180-day deadline by three months before I-D figured this out. No imaginable hybrid, however elegant, can rescue this chaotic ratiocination.

If this court validates I-D's circle of reasoning, it must identify the phantom hybrid hanging between "statutory" and "common law" liens, label that hybrid and define its function. Gillman avers that a hybrid is too far afield of legislative intent, consigning the Salt Lake condo lien to its rightful classification: common law. It is not "statutory," for failing the authority of *UCA §38-1-3*, cannot be anything else except common law, and Wrongful Lien law is the appropriate means for the sanctions the legislature adopted, for the reasons it intended.

I-D strays into other excuses for annulling the wrongful lien on the Salt Lake condo, which were embraced by the trial court:

- There was a "good faith" basis for the lien. (*Apellee Brief, p. 28)*
- There was a "plausible basis." *(Id.)*
- The lien was "misplaced due to an explainable error." *(Id., p. 39)*
- Though the lien was "mistakenly and innocently" filed on the wrong property, Gillman knew the work on the Herriman house remained unpaid. *(Id.)*
- Gillman 'knew' there was an error and took advantage by "lying in wait" until the statutory deadline passed. *(Id.)*

- Gillman "suffered no harm." *(Id.)*
- The Wrongful Lien statute cannot be used as a "bludgeon" by the property owner. *(Id., p. 40)*

None of these excuses is an exception anywhere in either statute or precedent. The "plausible basis" excuse relies on retroactively connecting the Herriman and Salt Lake properties—after the statutory deadline. The "bludgeon" depiction just might be apropos, though not as a defense for the lien claimant. Indeed, it is clear that the legislature meant to design the Wrongful Lien statute as a powerful and immediate cudgel for the aggrieved property owner to summarily extinguish the counterfeit cloud of a common law lien—exactly the character of the Salt Lake condo lien.

7. I-D failed its trial burden of proof for an express contract. The contract was implied-in-fact and I-D's burden was to prove "reasonable market value."

The core of the contract dispute was price. The sole writing between I-D and Gillman was a work order, which included only a task list and an incomplete materials list, but no pricing. I-D consistently claimed that the work order was an express contract and the court concurred.

Gillman's *Appellate Brief* (pp. 40-51) comprehensively parses Utah contract law, which does not support a finding of express contract without a price term. Neither the court nor I-D denies there was ever agreement for price. I-D arbitrarily announced its total charges to Gillman, three days after the work.

First recognizing that "a meeting of the minds" is unequivocally necessary to the formation of an enforceable contract, both I-D and the court then dismiss pricing as fundamental to that "meeting." Instead, the element of pricing is interchanged with these indefinite surrogates:

- **There is clearly a meeting of the minds.** Plaintiff expected to be paid for the work and materials provided, and Defendant clearly expected to pay. **Although the exact costs and work were not confirmed at the outset, Defendant was well-versed in construction contracts, and knew to expect that she would be billed for both supplies and labor.** *(R. 655:34-656:35, Conclusions of Law) (Emphasis added)*

- The court decided the work order constituted a valid and binding contract after considering "the circumstances under which the agreement was entered into. . ." *(Appellee Brief, p. 44)*

- When Gillman signed the work order, she acknowledged an obligation to pay. *(Id.)*

- Gillman never complained about the quality of I-D's work. *(Id., pp. 44-45)*

- I-D testified at trial that their hourly rates were industry standard. *(Id., p. 45)*

- Gillman wanted the work completed quickly, so price was not an essential term of the contract. *(Id., p. 47)*

I-D's indefinite stand-ins are flimsy proffers against Utah's conventional regulation of contract law that dictates exacting terms:

- [w]e are asked to determine whether there is sufficient evidence to support the trial court's finding of **no enforceable written or oral contract**. . . [t]here was **no meeting of the minds as to the contract price, an essential**

term of a construction contract *Davies v. Olson, 746 P.2d, 267 (Utah Ct. App. 1987)* (Emphasis added)

- [A] meeting of the minds on the integral features of an agreement is essential to the formation of a contract. **An agreement cannot be enforced if its terms are indefinite.** *Nielsen v. Gold's Gym, 2003 UT 37, ¶11, 78 P.3d 600* (Emphasis added)

I-D answered none of Gillman's contract argument in its *Appellee Brief*, and the case law it cites only supports this court's historic stand for the necessity of "definite" terms for express contracts, which include price. Utah contract law does not run parallel to the court's conclusion of law that the contract was express.

I-D failed its burden of proof at trial. Absent price, the contract between I-D and Gillman was implied-in-fact, not express, changing I-D's burden to proving the "reasonable market value" of its services, the appropriate principle this court so cogently explained in *Davies*. I-D consumed its trial record with evidence to prove an express contract. The only evidence of the "reasonable market value" of I-D's services under implied-in-fact contract law was coincidentally adduced by I-D in its direct examination of Gillman, and is between $600 and $700—not the $1,827.61 invoice total that was never agreed. *(R. 1137:6-1138:2; 1372:4-23)*

Trial closing argument was submitted to the court in writing. *(R. 602-622)* Gillman methodically briefed the court on *Davies* and its evident criteria that classify the contract as implied-in-fact, not express. Despite being fully advised in precedent, the court sided with I-D's express contract idea. The court's conclusion of law is error.

8. I-D disguises the whole truth.

Gillman did not challenge the *Findings of Fact* and neither does I-D. Yet, I-D's *Appellee Brief* is composed of a lengthy and laborious recitation of the trial court's ruling, together with a tedious rehearsal of selected trial evidence. This pattern of I-D's briefing in the case is familiar—an incomplete string of preferred facts that never explicitly and comprehensively correlates to either an argument against the court's factual accuracy, or an answer to Gillman's pointed dissection of why the court's conclusions of law are unfounded.

The hard edges and sharp corners that frame the law in this case arise in contract. I-D warped that frame to a distended extreme with the unlawful use of mechanic's lien law and lost twice, but not before generating tens of thousands in attorney fees. Caught in the statutory imperative of liability for Gillman's fees in defeat, I-D has doggedly fought to reverse that liability by artificially imposing responsibility on Gillman, the birth of the *'Gillman-fault'* theory. I-D's *Appellee Brief* is merely another in the long sequence of *'Gillman-fault'* intonations that forms a fresh, inflammatory haze, but does not answer the firm edicts of law.

I-D broke lien law, not Gillman. I-D filed a wrongful lien, not Gillman. I-D failed its contract burden of proof, not Gillman. Attendant attorney fees and sanctions for each issue are functionally divided. I-D's composite pulp is not the law, and these

appeal issues are questions of law. The trial court does not have discretion to supplant the law and it is clear error to incorporate anything else.

This ponderous exercise has taken more than five years and eight inches of paper to fabricate. It is not the law under the distinct issues of mechanic's liens, wrongful lien, and contract in the case. Neither is it loyal to the scrupulous practice of law—narrowing issues to a synthesis of applicable facts, then applying an objective analysis of conformity against statute and precedent, rather than devising mock tentacles to reach for convenient snippets of irrelevant law that catapult the discourse outside its authentic boundaries, to be aimlessly chased around forever at exorbitant cost. Thus far, this has been the meandering route of this case. I-D's *Appellee Brief* is just a renewed effort to skew this court's perspective, in the same way the *'Gillman-fault'* theory sullied the trial court's rulings. The law is the law, and should be immune from deleterious diversions. Gillman prays the court bring this undignified maelstrom to an abrupt and well-deserved end, finally forcing these issues into compliance with law.

CONCLUSION

I-D's tactic to consolidate issues of the mechanic's liens, the wrongful lien, and the contract claim, justifying the unification with its *'Gillman-fault'* theory, does not authorize I-D's claim to all attorney fees in this litigation. Statutory attorney fees are mandated for Gillman's summary defeat of I-D's two mechanic's liens before trial, and this court is vested with the jurisdiction to rule on the issue.

I-D never provided either service or material to the Salt Lake condo, the absolute prerequisite under the Mechanic's Lien statute to claim "statutory" lien authority. Without "statutory" authority, the condo lien was "common law" and wrongful, as defined by the Wrongful Lien statute. I-D's long list of excuses for violating lien law presents no exceptions in statute or precedent. Gillman is entitled to the attorney fees and sanctions of the Wrongful Lien statute. (*Appellate Brief*, pp. 25-34)

I-D failed its trial burden of proof for an express contract. The contract between I-D and Gillman was implied-in-fact, shifting the calculation basis from I-D's invoice total to the "reasonable market value" of its services. I-D failed to carry its trial burden of proof and Gillman is entitled to her trial attorney fees. (*Appellate Brief*, pp. 34-44)

DATED this 23rd day of May 2016.

FILLMORE SPENCER, LLC

Mark D. Stubbs
Attorneys for Defendant

Certificate of Compliance 24(F)(I)

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I. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(I), containing 5,956 words, excluding those parts of the brief exempted by Utah R. App. 24(t)(I)(B).

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DATED this 23rd day of May 2016.

FILLMORE SPENCER, LLC

Mark D. Stubbs
Attorneys for Defendant

Certificate of Service

I hereby certify that two true and correct copies of the foregoing Reply Brief of Appellant were mailed this 23rd day of May 2016 to:

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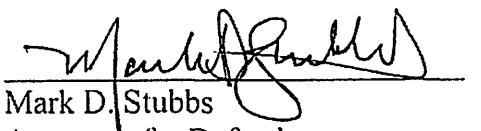

Mark D. Stubbs
Attorneys for Defendant

Tab 1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

I-D ELECTRIC, INC., Plaintiff, v. LINDA T. GILMAN, Defendant.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** Case No. 110917777 Judge RICHARD D. McKELVIE DATE: January 20, 2015

This matter came before the Court for trial November 10-13, 2014. The parties thereafter submitted written closing arguments. The Court, having reviewed the testimony and exhibits entered at trial, and having considered the arguments of counsel, enters these findings pursuant to Rule 52(a), Utah Rules of Civil Procedure.

FINDINGS OF FACT

Following is a list of the witnesses testifying at trial, together with a synopsis of their testimony, and (where appropriate) specific findings regarding the adoption or rejection by the Court of their testimony.

A. Chet Hunter

1. Chet Hunter testified that he is a journeyman electrician who has been employed by Plaintiff since 1998. On March 10, 2011, Hunter was at an electrical wholesale supply picking up supplies when he was approached by Defendant, whom he had not met previously. Defendant asked Hunter if he was an electrician, and when he responded in the affirmative, she told him she wanted to hire him to do some work on a house, and asked her to follow him to the residence.[1]

1 Defendant testified that she did not request that Hunter follow her, and would never have done so. As will be explained as appropriate in these findings, the Court credits the testimony of Hunter and discredits the testimony of Defendant on this point. Although this point is clearly not critical to the findings of the Court, there are numerous instances in which Defendant's testimony was directly at odds with other witnesses at trial, which will be identified.

2. Hunter explained that he had another job and could not follow her at that time, but provided contact information. Later that day, he met her at the residence, in Herriman, Utah. They met for "a couple of hours" and went over the scope of work she requested. No work was performed that day, but arrangements were made to begin work the following day.

3. The primary work requested of defendant was in the garage of the property, and included moving wires that were hung over the trusses of the garage so that a floor could be installed in the attic of the garage. Other work included replacing power outlets, moving switches, and moving a sprinkler control box. Defendant did not ask for a bid, but she did ask Hunter how much the work would cost. Defendant had some materials in the garage, which she asked Hunter to use on the project in favor of materials supplied by Plaintiff. He indicated he would use her materials to the extent possible.

4. The following day (Friday, March 11, 2011) Hunter returned to the Herriman property with Blake Trip and Brick Anderson. Trip was a journeyman electrician and Anderson was an apprentice. They arrived at the job site between 8:00 and 8:30 a.m.[2] and accessed the garage by using a key code given to Hunter by Defendant. Their first priority was to move the wiring across the trusses so the flooring could be placed.

5. Defendant arrived at the residence mid-morning and remained through much of the day. She observed some of the work in progress, and consulted with Hunter to a degree, but was largely engaged in other projects during the day. At some point in the afternoon, Hunter left the residence to go to Home Depot in order to purchase special wire needed to complete the relocation of the sprinkler box. The GPS log indicates he left at 2:13 p.m. and returned at 2:51 p.m.[3] When he returned to the residence Defendant had left and did not return that day. Hunter left for the day at 5:17 p.m.

6. Hunter prepared a work order which outlined the tasks completed and the amount of time spent by each electrician. Hunter went over the work order with Defendant, who indicated that she was "OK " with it and wanted them to return to complete more work. She asked for a price estimate, but Hunter explained that the pricing would be done by the company management. That work order was presented to Defendant for signature by one of the other workers while

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2 Hunter's company truck was equipped with a GPS tracking device which tracked the time and location of the truck at any time it was operating. The log was produced to Defendant by Plaintiff as an enclosure to a letter dated April 7, 2011 providing an invoice for work done. The letter and accompanying log were introduced as Exhibit 5 at trial. The parties stipulated that the log was off by one hour, and that a notation (as an example) of Hunter's arrival at The Herriman property at 9:19:20 on March 11 was actually 8:19 a.m. The GPS log is critical to the Court's analysis of the credibility of witnesses that follows.

3 The Home Depot receipt, part of Exhibit 2, indicates a time of 2:41 p.m., which is consistent with the GPS log.

7. Hunter was gone to Home Depot, and Defendant signed the work order, which was admitted as Exhibit 2. Adjacent to Defendant's signature is the following notation:

> Payable 30 days net – A service charge of 2% per month which is an annual rate of 24% will be charged on all past due accounts. Purchaser agrees to pay all costs and expenses including reasonable attorney's fees in the event collection becomes necessary. There will be handling and restocking charges on all returned goods.

The following Monday, Hunter attempted to contact Defendant to arrange to return to the home to begin completion of the work. He left messages, which she did not return. He went to the Herriman home and attempted to gain entry, but the garage code had been changed.

B. Blake Trip

8. Blake Trip testified that he was a residential journeyman electrician working for Plaintiff in March, 2011. He accompanied Hunter to the Herriman job site on March 11, and participated in the work done. He testified generally that he and his co-workers were busily engaged throughout the day, and completed a large amount of work. He also testified that at some point during the afternoon, Hunter had to go to Home Depot to purchase sprinkler wire. While Hunter was gone, Defendant indicated she was leaving for the day. Prior to her departure, Trip requested and obtained her signature at the bottom of the work order (Exhibit 2). He also testified that at no time did she complain about the quality of the work done.

C. Trip Anderson

9. Trip Anderson testified that he accompanied Hunter and Trip to the Herriman job site. He was an apprentice electrician, and testified that he "got stuck with" the jobs no-one else wanted to do. Because of his slight build, he often was the only one on a job site who could access small areas such as crawl-spaces and attics. He testified that he spent the entire day in the attic replacing the wiring so the flooring could be placed. He indicated there was a great deal of physical labor necessary because there was an abundance of building supplies that needed to be moved. Much of the attic had no floor, and he had to balance himself, while lying down, on the narrow edge of roof joists and trusses. He testified that he saw Defendant "a few times" when she came up into the attic to determine his progress, but that she was mostly in the garage.

D. Kim Olson

10. Kim Olson testified that he is the president of Plaintiff, ID-Electric. He has worked for the company for 45 years. He testified that in 2011, the company rate for journeyman and apprentice electricians, respectively, was $65 and $50 per hour, which he acknowledged was "a little above median" for the Salt Lake market. He testified that the company considered their

ability to get to jobs quickly and on short notice made up for the slight premium over the median market.

11. Olson testified that there are two common billing arrangements; "cost plus" billing and "bid" billing. In cost plus billing, the labor and materials are calculated either at the end of a job or, in a longer, more complex project, on an ongoing basis. In bid billing, the company creates and submits a binding bid in advance of the work done. Olson testified that most customers prefer cost plus billing, and that is the company's default billing system.

12. Olson became aware of a billing dispute with Defendant when Hunter contacted him and asked him to go over the bill with Defendant. Hunter told Olson that Defendant "was a little off" and that he had called to offer to go over the bill, and she had changed to code to the garage. Olson contacted Defendant by phone, and she wanted to know how much the remainder of the job would cost, which he inferred as a request for a bid. However, no arrangement to complete the work was ever made.

13. An invoice was sent to Defendant, and after 30 days, the company started to call Defendant to obtain payment. They left numerous messages, which were never returned.[4] Olson sent a detailed invoice on April 7 (exhibit 5) outlining the work and hours of each electrician. On May 6, 2011, Defendant sent a letter to Olson (exhibit 6), which stated in part:

> "Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 2.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first $4.74 million phase of a 15-month construction project in December. The second $1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than $11 million."

14. Olson understandably felt that Defendant was trying to intimidate him with the letter, and he contacted counsel. He gave his attorney directions to file a mechanic's lien on the property, which he has done only two times in the past 5 years.

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4 A pattern emerged regarding Defendant's unwillingness to directly confront the billing issue; in addition to habitually failing to return phone calls, she ignored several letters and written communications, including certified letters indicating legal proceedings would be or had been initiated. This willful neglect on the part of Defendant contributed greatly to the costs incurred by Plaintiff in collecting the debt.

15. The company's counsel prepared a mechanic's lien for filing, and presented it to Olson for review. Olson did not notice that the lien listed a Salt Lake City Condominium as the subject property, rather than the Herriman house.[5] Olson testified that he did not intend to place a lien on the condo, and that it would not be ethical to do so. The Court credits this testimony, and rejects defendant's claim that the lien was placed on the condo because the condo was unencumbered by any liens or mortgages, but the Herriman property was. As Olson pointed out in his testimony, the mechanic's lien was for only $1827, and was placed on the property in an effort to force Defendant to respond to repeated efforts to collect the debt. There is no evidence in the record to support Defendant's contention that the condo was deliberately chosen as a target for the lien. From all of the evidence, and the logical inferences to be drawn therefrom, the Court concludes and finds that the placement of the lien on the condo rather than the Herriman house was a clerical error made by Plaintiff's counsel and not a deliberate act to gain tactical advantage in the collection of the debt.

16. On November 11, 2011, Defendant delivered a letter to Olsen's office. At that time, Defendant knew that Plaintiff was represented by counsel (this issue will be discussed in further detail below) and she had also retained counsel, although the record is not clear that Olson knew that at the time. This letter was introduced as Exhibit 12. Unlike Exhibit 6, which spans two pages and is very detailed, Exhibit 12 is deliberately vague, and states in its entirely (excluding salutations):

> "Hasn't this already gone too far? First you file a lien on my property and I understand that has recently been followed by a lis pendens. Neither is either reasonable or justified under the circumstances, and without a legal basis. Please remove both immediately. There is no point in the senseless the [sic] accumulation of any more legal fees. It's about time to do the right thing."

17. The Court finds that Defendant knew that the lien had been placed on the wrong property, and that she intentionally and deliberately failed to mention that fact in the letter to Olson. The Court further finds that Defendant did so, after consulting with counsel; in a deliberate effort to establish a cause of action against Plaintiff for filing a wrongful lien. This finding will be further explored below during a discussion of Defendant's testimony.

18. On December 6, 2011, Olson received an email from his attorney indicating the lien had been filed on the wrong property. Olson instructed counsel to remove the lien immediately. He testified, and the Court finds, that this was the first date on which Olson knew the lien had been placed on a property other than the one on which the work had been completed. The Plaintiff

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5 Defendant lived at the Salt Lake City Condo, and used the address in all of her correspondence and dealings with Plaintiff. She did not reside at the Herriman home, and shared ownership of that home with her daughter.

filed a motion with the court to remove the lien that same day.

E. Linda Gillman[6]

19. Defendant testified that she owns two properties in Salt Lake County; the home in Herriman which is the subject of this lawsuit, and the Salt Lake condo on which the lien was erroneously placed. She purchased the Herriman house in 2007 and remodeled it to accommodate her aging mother. She was planning to update the home, particularly in the garage area, and her primary objective was to move wiring from the trusses in the attic so that flooring could be placed there.

20. Defendant testified that she is a graduate of the University of Utah College of Law (in the 70s). She testified that she has never been a member of any bar. She made the following statements regarding her relationship with the practice of law, in the course of her testimony:

"I'm an attorney of sorts."
"I'm not a member of the bar."
"I've been practicing law for about 10 years."
"I have been working with clients but I have to be associated" with a licensed attorney.
"I do the work and they sign it."
"I have drafted most of the pleadings" in the instant case.
"I didn't draft the initial pleading but I've drafted most of the rest."

21. Defendant testified that she met Chet Hunter at the electrical wholesale supply, and approached him about doing electrical work on the Herriman house. He came to the home later in the day, and they walked through the house, looking at the projects she wanted completed. She testified, however, that "he stood around in my kitchen for a long, long time talking about politics." She testified that she asked for a bid, and that he told her "he would give me a number in the morning."

22. Defendant testified that she arrived at the Herriman home the following morning. All three of the electricians were there when she got there, but they were not working. The Court discredits this testimony and finds, pursuant to the testimony of Plaintiff's witnesses, that all 3 electricians were substantially engaged in pursuit of their work during their time at Defendant's property. Their testimony was consistent with one another, and the Court finds there testimony truthful on that point. Moreover, as will be pointed out in detail, Defendant's testimony that the electricians were not substantially working is contradicted not only by their collective testimony but by objective facts and logical inferences the Court draws from those facts.

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6 Defendant Gillman testified on two separate occasions. She was initially called by Plaintiff, and then testified on her own behalf. For the sake of continuity, the Court addresses both instances together.

23. Defendant testified that although it seemed Hunter was working, "Blake (Trip) was leaning on a counter" and "Brick (Anderson) was lying on a truss in the attic," but not working. Defendant testified that she didn't comment or complain, because she thought she would only be charged "for the time they were actually working." "It never crossed my mind that I was paying these guys $100 an hour to do nothing." The Court finds this statement not credible. Anyone with Defendant's professed knowledge of construction and the construction industry would surely realize that workers on a job site, being compensated on an hourly basis, would be paid for the entirety of their time, and would not keep track of minutes or moments during which they were not actively engaged.

24. Defendant testified that when she arrived at the house at 10:00, the rewiring in the attic had already been completed. This testimony is squarely contradicted by testimony that the attic project took all day. Further, Defendant testified that Anderson was in the attic the entire time she was there, and that she only saw him when she went into the attic. To accept her testimony then, would be to accept that from 10:00 a.m. to at least 3:30 p.m., when Defendant testified she left, Anderson lay on his back in an unheated, unlit attic, on narrow trusses, doing absolutely nothing. This testimony is at odds with the weight of the testimony in the case, and contrary to any notion of common sense, and the Court rejects it.

25. Defendant testified that she left around 3:30, and signed Exhibit 2 (the work order) before she left. Hunter was not there at the time, and the work order was presented by Trip. She testified that she did not read the paragraph (regarding payment terms) at the bottom of the form. She acknowledged, however, that it is common language on construction forms, with which she is very familiar.

26. Regarding Defendant's testimony about the work done on March 11, there is a wealth of evidence that contradicts her. As an example, she testified that she observed while Hunter and Trip "fished" the wire and did the other work necessary to move the sprinkler box, and that work was completed before Hunter left. However, the objective evidence is clear that Hunter left in mid-afternoon to obtain that very wire, and that Defendant was gone by the time he returned. Defendant testified that Hunter left more than once; first to get the wire, and then again before she left at 3:30. That testimony is contradicted both by fact and logic. The GPS logs make clear that after returning from Home Depot, Hunter did not leave again until 5:17, long after Defendant was gone. Further, he returned with the wire at 2:51. It is unreasonable to infer that there was time for Hunter and Trip to complete the sprinkler box removal, and for Hunter to leave again, before Defendant left at 3:30. Defendant's testimony regarding the events of that day are largely contradicted by objectively believable evidence.

27. Defendant testified that the following Monday, March 14, Kim Olson called her, and told her the bill for the work to date was $1827. She expressed to him that she was "stunned" by the amount, and remembered saying, "for one day?" She testified that "after Mr. Olson called me, it was pretty clear what had happened. I didn't want these people working for me any longer." She said that she never talked to Hunter again, and that she left town "a day or two after." She testified that she got a "couple" of voicemails from Hunter because he wanted to get back into the house to finish the work," but she never called him back. In another contradiction, Defendant testified that she had changed the code on the garage door over the weekend. At an earlier time, she testified that she changed the code after she had talked to Olson and found out how much they intended to charge her.

28. Defendant testified that she asked for a breakdown of charges after she received the invoice from Plaintiff. She also testified that she knew the company was trying to reach her, but she was neither taking nor returning their calls. She also testified she never received a certified letter sent by Plaintiff's counsel, urging her to pay the invoice, and suggesting legal action would be taken if she did not (exhibit 7) Nor did she receive Exhibit 8, another letter from counsel dated June 15, notifying her that a mechanic's lien had been placed on her property.

29. Defendant testified she didn't receive the letters because she was out of town for much of the time between March and mid-June, 2011. Notably, Defendant provided absolutely no evidence indicating the dates she was gone, where she was, or the dates she was back in town. The inference from her testimony is that she never received the notices for the certified mail, which she did not therefore pick up from the post office. Again, the Court rejects her testimony. By all observations, including her own testimony, Defendant is a capable, accomplished business-woman who keeps meticulous records and appears to retain everything. Any documentation of business travel would have been required for business and tax purposes, and could have easily been provided to the Court in support of her contention that she was gone for the entirety of this critical period. The fact that she provided no such testimony or documentation, coupled with her admissions that she continually avoided returning phone calls and correspondence from Plaintiff, leads the Court to conclude that her avoidance of these letters was willful rather than circumstantial.

30. Defendant spoke with counsel for Plaintiff on June 16, and he told her a lien had been filed on her property. She went to the County Recorder's office to confirm the lien, but could not. She did not look to determine whether a lien had been filed on the condo, but checked only the Herriman house. Defendant testified that she was served with the pending lawsuit on September 25, 2011, and that it was the first time she realized that the lien had been placed on the wrong property.

31. Defendant testified that she obtained counsel in mid-October, because she wasn't very well-versed in Utah law and wanted to find someone who was. Regarding Exhibit 12, the letter demanding the lien be removed, she testified that she delivered the letter to Plaintiff personally "on the advice of counsel."[7] She testified that she knew that the failure to remove the lien within 10 days would result in a potential damage claim in her favor against Plaintiff.

32. Again, the Court rejects Defendant's testimony on this score. Defendant is admittedly trained in the law, and is engaged in the practice of law, albeit without a license. Her suggestion that she and her counsel determined that in order to be effective the letter would have to be delivered directly by her to Plaintiff is not only an invalid legal conclusion, it is an improper one. She and her counsel both knew that Plaintiff was represented by counsel, and presumably her counsel knew, even if she did not, that direct communication with a represented party in a violation of the Canons of Ethics. The Court finds that Defendant's decision to deliver the letter personally, whether on advice of counsel or not, was a deliberate attempt to obscure the reason she believed the lien was improper, and thereby set up a claim of wrongful lien. The Court finds that Defendant knew or reasonably should have known that any such letter authored or signed by her counsel and directed to Plaintiff's counsel, would by ethical standards be required to contain more particularity regarding the factual or legal inadequacies of the mechanic's lien. This finding is further supported by the testimony of Defendant, who acknowledged that she and her counsel emailed several drafts of the letter back and forth before agreeing on the final version. Given the paucity of the letter, it becomes even more clear that it was intentionally vague in an attempt to lay a trap for improper or wrongful lien.

CONCLUSIONS OF LAW

1. DEFENDANT IS LIABLE FOR BREACH OF CONTRACT DAMAGES AS SOUGHT BY PLAINTIFF

33. Plaintiff claims, and the Court finds, that there was a binding contract between Plaintiff and Defendant. The necessary elements are present. Gillman's request for Plaintiff's services, given to Hunter at the electrical supply warehouse, constitutes an offer to contract. Plaintiff's acceptance is evidenced by Hunter's act of going to the Herriman home and completing the scope of work, and arranging for a crew of electricians to begin work the following day. Thus, offer and acceptance are present.

34. There is clearly a meeting of the minds. Plaintiff expected to be paid for the work and

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7 It is important to note that the counsel identified by Defendant as having shared this advice was NOT counsel who represented Defendant at trial.

materials provided, and Defendant clearly expected to pay. Although the exact costs and work were not confirmed at the outset, Defendant was well-versed in construction contracts, and knew to expect that she would be billed for both supplies and labor. The fact that she expressed dissatisfaction about the amount billed does not diminish the fact that she undertook a responsibility to pay. Moreover, she signed the work order, which had been substantially completed (albeit without prices) at the time. By doing so she acknowledged not only an obligation to pay, but an undertaking to pay a service charge and collection costs, to include attorney's fees, in order to enforce the contract.

35. Plaintiff substantially performed the terms of the contract. Although disputed by Defendant, the Court has found that the electricians provided by Plaintiff were continuously and properly engaged in the work for which they were employed. In her testimony Defendant went to great lengths to point out that many of the tasks performed by them were menial in nature, and she demonstrated that she could have done many of them herself. That misses the point. Defendant engaged the services of trained electricians, and had to know that they would be compensated the same amount (as Olson testified) for changing a light bulb as for replacing a circuit box or performing some other sophisticated procedure. Further, as outlined above, Defendant has dramatically understated the amount of work performed by Plaintiff, and the time it took. The Court has rejected her testimony on that score. The Court concludes that the work order accurately reflects the goods and services provided to Defendant pursuant to the contract.

36. Further, the contract carries a provision for service charges, collection costs and attorney's fees. This provision was acknowledged by defendant both at the time of receipt and at trial. There is no ambiguity in the contract, and no dispute that defendant was aware of the provision when she signed it.

37. Plaintiff has argued to the Court that, in the event there is no valid contract, principles of unjust enrichment provide the basis for judgment. In light of the Court's ruling on the validity of the contract, the Court will not address the issue of unjust enrichment.

2. PLAINTIFF IS NOT LIABLE FOR DAMAGES RESULTING FROM A WRONGFUL LIEN

38. Defendant's reliance on Hutter v. Dig-it, 2009 UT 69, 219 P.3d 918, is misplaced. The Hutter case does stand for the proposition, as propounded by Defendant, that a mechanic's lien is unenforceable under circumstances similar to those presented here. However, that issue is not before the Court. Plaintiff in this case is not making any effort to enforce the lien, and removed the lien as soon as it was learned that it had been placed on the wrong property. Rather,

Defendant seeks to utilize the Wrongful Lien statute (38-9-2(3) as a bludgeon rather than a shield.

39. As pointed out by Plaintiff, the lien here is not "wrongful" under the wrongful lien act. A lien is not "wrongful" because it is inaccurate or misidentifies the property it seeks to encumber. The lien is "authorized by statute" which takes it out of the definition of a wrongful lien. As the Hutter Court explained, a lien that is ultimately proved unenforceable is not a wrongful lien by virtue of that fact alone.

40. Further, the evidence supports that there was a good-faith basis for filing the lien, and the Court finds that the lien was misplaced due to an explainable error. Although the work was done on the Herriman property, Defendant used her condo address as a billing address and in all of her correspondence with Plaintiff. Although it evidences a lack of thoroughness, the use of the billing address in the lien is an understandable error. There is no evidence in the record to suggest that the lien was misplaced in an effort to cause damage to Defendant or to gain a legal or tactical advantage.

41. Conversely, the record is abundantly clear that, realizing Plaintiff's error in filing the lien, Defendant made a determined effort to capitalize on that error to her advantage. Clearly, Defendant suffered no harm from the misplaced lien, and her "lying in wait" strategy had at least one positive effect, from her standpoint. It made the lien unenforceable, and the delay created a legal impediment to Plaintiff's filing of a subsequent lien on the correct property. The Court sees no impropriety in such a defensive tactic, but will not recognize it as an appropriate cause of action to obtain damages against Plaintiff.

3. ATTORNEY'S FEES.

a. Plaintiff's fees

42. The Court has determined that Plaintiff prevails in its breach of contract claim. The contract itself has a provision for attorney's fees. In its written argument, Plaintiff has not claimed an amount for attorney's fees, but has not waived the right to do so. The Court finds that Plaintiff may be entitled to reasonable attorney's fees in this matter, and directs Plaintiff to submit a proposed order regarding attorney's fees.

b. Defendant's fees

43. The Court has found against Defendant on the breach of contract claim, and has similarly ruled against Defendant on her wrongful lien claim. The Court has recognized no cause of

action for which Defendant may be entitled to fees.

44. Moreover, it is clear, and the Court finds, that the expenses in this case, born by both parties, have been exacerbated by Defendant's continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use Plaintiff's harmless (and arguably beneficial, to Defendant) error to create a wrongful lien cause of action. It is therefore appropriate that Defendant bear the costs of Plaintiff's fees as well as her own.

ORDER

45. It is the order of the Court that Defendant is directed to pay to Plaintiff the following amounts:

46. 1. $3,393.09, representing damages due to breach of contract, including service fees (interest) through November 20, 2014.

47. 2. An amount of interest, pre-and-post judgment, to be determined by the Court based on submission by Plaintiff and rebuttal by Defendant.

48. 3. Attorney's feels in an amount to be determined by the Court based on submission by Plaintiff and rebuttal by Defendant.

49. It is the further order of the Court that Defendant's claim based on wrongful lien be, and the same is hereby, dismissed.

SO ORDERED this 26th day of January, 2015.

RICHARD D. McKELVIE
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 110917777 by the method and on the date specified.

MAIL: BRADY T GIBBS 11650 S STATE ST STE 103 DRAPER, UT 84020
MAIL: MARK D STUBBS 3301 N UNIVERSITY AVE PROVO UT 84604

Date: 01/29/2015 /s/ MCKAE MARRIOT

Deputy Court Clerk

Tab 2

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

I-D ELECTRIC, INC., Plaintiff, v. LINDA T. GILMAN, Defendant.	**ORDER ON MOTION FOR ATTORNEY'S FEES** Case No. 110917777 Judge RICHARD D. McKELVIE DATE: June 8, 2015

1. This matter is before the Court on Plaintiff's Motion for Attorney's Fees, Costs and Interest. The matter was heard by bench trial and the Court entered a verdict in favor of Plaintiff on January 29, 2015. The Court thereafter denied Defendant's Motion to Amend Ruling on March 18, 2015. Plaintiff thereafter filed the instant motion and accompanying memorandum, and Defendant filed an appropriate response with exhibits. The Court, having reviewed the pleadings and the record in this case, enters the following order.

2. The Court previously held that Defendant was responsible for damages based upon Defendant's breach of contract. The Court also ruled that Defendant's claim for wrongful lien was improper, and that claim was dismissed.

3. The Court reserved on the issue of attorney's fees, but expressly stated:

"Moreover, it is clear, and the Court finds, that the expenses in this case, born by both parties, have been exacerbated by Defendant's continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use Plaintiff's harmless (and arguably beneficial, to Defendant) error to create a wrongful lien cause of action. It is therefore appropriate that Defendant bear the costs of Plaintiff's fees as well as her own." (Order, January 20, 2015).

4. Plaintiff seeks fees in the amount of $29,144, and costs in the amount of $465.32. Defendant argues that "approximately half of total attorney fees on both sides of this case was spent asserting/defending the unlawful lien claims that Plaintiff voluntarily dismissed or summarily

lost." Although Defendant correctly asserts that many of the fees involved the litigation over a mechanic's lien, she is incorrect in her assertion that those generated fees are the result of Plaintiff's own actions. The Court's earlier ruling is in contravention of that argument.

5. First, it must be noted that the Court determined that the lien was not "unlawful." Although the lien was filed against the wrong property, the Court determined that the errant filing was inadvertent and was corrected immediately upon Plaintiff's counsel learning of the error. Notwithstanding that correction, Defendant insisted on pursuing a cause of action for wrongful lien, both through motion for summary judgment and at trial. The mechanic's lien issue became the "tail wagging the dog" in this case, and Defendant was relentless in her pursuit of it. Indeed, although Defendant argues that she made repeated attempts at settlement in this matter, Plaintiff alleges by Affidavit of counsel that none of her settlement offers included a settlement of her "wrongful lien" cause of action.

6. Defendant correctly asserts: "Why attorney fees escalated to more than 32 times Plaintiff's underlying contract claim cannot be ignored." Yet, Defendant then does her best to ignore the cause, casting blame on Plaintiff for filing a mechanics lien after its repeated attempts to collect a valid debt went not just unanswered, but literally ignored.

7. The Court does not excuse Plaintiff's error, and finds that $3,632 of its claimed fees were generated as a result of "active litigation of the Mechanic's Lien." Plaintiff's reply brief, p. 4. Accordingly, the Court is of the view that Plaintiff is not entitled to recover those fees, and the award of attorney's fees will be reduced by that amount.

8. However, the Court has previously determined that the driving force behind this litigation was Defendant's intractable position that the original charges for services were unreasonable, and her steadfast determination to take advantage of an inadvertent clerical error committed by Plaintiff's counsel. It is extremely doubtful that this matter would have extended to a three-day trial (or gone to trial at all) over the initial claim based on work performed and not paid for. Defendant made a strategic decision to take advantage of the misplaced lien, not only as a means of avoiding the original debt, but as a means of punishing Plaintiff for taking action against her. Her own words, cited to in the Court's verdict in this matter, underscore this fact:

> "Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 2.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first $4.74 million phase of a 15-month

construction project in December. The second $1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than $11 million."

Letter from Defendant to Plaintiff, dated May 6, 2011.

9. To Plaintiff, this action was nothing more than an effort to collect a valid debt. To Defendant, it appeared to be an affront to her professional abilities and her sense of propriety. The Court views defendant as primarily, if not solely, responsible for the excessive and unnecessary costs associated with this case, and hereby ORDERS as follows:

10. 1. Defendant is to pay Plaintiff's attorney's fees in the amount of $25,512 (sought fees of
11. $29,144 less $3632 discussed above.
12. 2. Defendant is to pay Plaintiff's costs in the amount of 465.32.
3. Defendant is to pay Plaintiff 24% per annum interest on the above amounts calculated from the date of judgment and adjusted for any amounts already taken into consideration by the calculations of Plaintiff's counsel in it' prayer for an award amount.

SO ORDERED this 8 day of June, 2015.

RICHARD D. McKELVIE
DISTRICT COURT JUDGE